



U.S. Department of Justice

*United States Attorney
District of New Hampshire*

*Federal Building
55 Pleasant Street, Room 352
Concord, New Hampshire 03301*

603/225-1552

MEDIA RELEASE
For Immediate Release
February 19, 2003

Contact: Thomas P. Colantuono
United States Attorney
William E. Morse
Assistant U.S. Attorney
(603) 225-1552

FORMER TYCO CFO INDICTED FOR TAX EVASION

CONCORD, NEW HAMPSHIRE: U.S. Attorney Tom Colantuono and Eileen J. O'Connor, Assistant Attorney General, U.S. Department of Justice, Tax Division, announced today that a federal grand jury in Concord, New Hampshire, returned an indictment charging Mark H. Swartz, former Chief Financial Officer of Tyco International Ltd., with illegally evading nearly \$5 million in personal federal income taxes. Specifically, the grand jury charged that Swartz filed a tax return for 1999 that failed to include a \$12.5 million bonus that Swartz received from Tyco in August 1999. Swartz, age 42, resides in Rye, New Hampshire, and Boca Raton, Florida.

According to the indictment, Swartz's bonus took the form of Tyco's forgiveness of \$12.5 million in debt that Swartz owed the company by virtue of loans charged to Tyco's so-called Key Employee Loan Program (KELP). The KELP allegedly was established by Tyco for the limited purpose of helping Tyco executives and employees pay taxes arising from the vesting of stock granted under Tyco's restricted shares program. Under the terms of the program, no other uses of the loan proceeds were permitted.

The indictment alleges that by August 1999 Swartz had accumulated a debit balance of approximately \$17.7 million in his KELP account. At the end of August 1999, Swartz advised a senior employee in Tyco's Finance Department that he had been informed that Tyco's Board of Directors had authorized bonuses to Tyco's Chief Executive Officer, Swartz and a third Tyco employee in the form of forgiveness of substantial amounts of their KELP indebtedness. According to the indictment, Swartz advised the Finance Department employee that Tyco was forgiving \$25 million of Tyco's Chief Executive Officer's KELP indebtedness, \$12.5 million of Swartz's KELP indebtedness and \$1 million of the third employees' KELP indebtedness. Other Tyco employees made the accounting entries, the effect of which was to forgive KELP indebtedness in the aggregate amount of approximately \$38.5 million, including \$12.5 million of Swartz's KELP indebtedness. The indictment alleges that Swartz's statements to Tyco's Finance Department employee were false and that, in fact, Tyco's Board of Directors had not approved the bonuses or any forgiveness of KELP indebtedness.

According to the indictment, Swartz's bonus was not reflected on his Internal Revenue Service Form W-2. Swartz allegedly failed to timely notify Tyco's payroll department, which was responsible for compiling the information for Tyco's Forms W-2. In addition, the indictment alleges that Swartz caused his personal financial assistant to create income summaries for Swartz's tax preparer that failed to include the \$12.5 million bonus. Swartz also allegedly caused Tyco to file documents with the Securities and Exchange Commission that failed to include the \$12.5 million bonus in their disclosures of Swartz's compensation.

The indictment further alleges that Swartz did not report his \$12.5 million bonus on his personal federal income tax return even though he knew that it constituted taxable income. The indictment states that Swartz's 1999 federal income tax return reported taxable income of more than \$9.5 million and a tax due of approximately \$3.7 million. The return omitted Swartz's \$12.5 million bonus, which would have required payments of additional tax of approximately \$4.95 million.

If convicted, Swartz faces up to five years in jail and a fine of up to \$250,000. A trial date has not yet been set.

This matter was investigated under the oversight of the President's Corporate Fraud Task Force. It was investigated by the Internal Revenue Service with the assistance of the Boston Field Office of the Federal Bureau of Investigation. The prosecution is being handled by Assistant U.S. Attorney Bill Morse and James W. Chapman, a Trial Attorney with the U.S. Department of Justice, Tax Division.

United States Attorney Colantuono reminds the public that an indictment merely alleges that a crime has been committed and that all defendants are presumed innocent until proven guilty beyond a reasonable doubt.